

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 30752 of 2005(J)

PETITIONER:

PREETHA V.PANAKKAL,
DRAWING TEACHER, M.U.P. SCHOOL, PONNANI.

BY ADV. SMT.V.P.SEEMANDINI (SR.)
SMT.S.KARTHIKA
SMT.VEENA.B.KUMAR
SMT.K.P.GEETHA MANI

RESPONDENTS:

1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.
4. THE DISTRICT EDUCATIONAL OFFICER,
TIRUR.
5. THE ASST. EDUCATIONAL OFFICER,
PONNANI.
6. THE MANAGER,
M.I. HIGH SCHOOL FOR GIRLS, PONNANI,
MALAPPURAM DISTRICT.

BY ADV. SRI.NOUSHAD THOTTATHIL FOR R6
GOVERNMENT PLEADER SRI.C.M.NAZAR FOR R1 TO R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-1-2007, THE COURT ON 24/01/2007 DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: True copy of the disability certificate issued by the District Social Welfare Officer dated 10-12-2003.
- P2: True copy of the appointment order dated 15-7-1996 issued by the 6th respondent.
- P3: True copy of the staff fixation order dated 30-11-96 issued by the 4th respondent.
- P4: True copy of the Govt. Order dated 13-9-2001 issued by the 1st respondent.
- P5: True copy of the appointment order dated 15-7-1997 issued by the 6th respondent.
- P6: True copy of the staff fixation order dated 23-6-2004 issued by the 5th respondent.
- P7: True copy of the letter dated 21-12-2004 issued by the 4th respondent.
- P8: True copy of the order dated 21-12-2004 issued by the 4th respondent.
- P9: True copy of the order dated 11-1-2000 issued by the 4th respondent.
- P10: True copy of the order No.B1.486/05 dated 7-3-2005 issued by the 3rd respondent.
- P11: True copy of the G.O.(P) No.32/98/P & ARD dated 28-9-1998.
- P11(a): True copy of the order dated 24-11-2005 issued by the 3rd respondent.
- P12: True copy of the representation dated 8-8-2005 by the petitioner before the 1st respondent.

P13: True copy of the representation submitted by the petitioner's mother before the then Education Minister.

P14: True copy of the G.O.No.46415/J2/99/G.Edn. Dated 30-3-2000

P15: True copy of the circular dated 27-1-2005 issued by the 1st respondent.

P16: True copy of the order dated 14-7-1997 issued by the 6th respondent

P17: True copy of the order dated 8-2-2006 issued by the 1st respondent.

P18: True copy of the appointment order dated 15-7-1972 of Stm.K.C.Radha.

K. Thankappan, J.

W.P.(C). No. 30752 of 2005

Dated this the 24th day of January, 2007

JUDGMENT

Question arises for consideration in this writ petition is with regard to the continuation of the petitioner in the post of Drawing Teacher in the 6th respondent school in spite of the fact that the post of Drawing Teacher was liable to be abolished for want of mandatory minimum effective strength of pupils during 2004-'05.

2. The case of the petitioner is that she was appointed as a Drawing Teacher in M.I. High School for Boys, managed by the 6th respondent, on 15-7-1996 and she continued in the above post till 14-7-1997. The above appointment was not approved by the 4th respondent District Educational Officer on the ground that since the High School section of the M.I. High School was a newly opened one, the Manager is bound to fill up the post by protected teachers. In the meanwhile, for the year 1996 when a post of Drawing Teacher became vacant in the M.I.U.P. School, under the same management due to the death of a Specialist Teacher on 19-5-1997, the petitioner was appointed in that post on 15-7-1997. The appointment of the petitioner was approved by the 5th respondent Assistant Educational Officer as per order dated 17-10-1997. The petitioner continued in that post

up to November, 2004. Thereafter, the post of Drawing Teacher, to which the petitioner was appointed, was abolished by the 3rd respondent for want of mandatory minimum effective strength of pupils. The petitioner was ordered to be retrenched from service with effect from 15-7-2004 by the 5th respondent on the ground that the petitioner was appointed on 15-7-1997 and not on 14-7-1997 and hence she was not entitled for protection. The order passed by the 5th respondent was confirmed by the 4th respondent, against which the 6th respondent Manager filed an appeal before the 3rd respondent. The appeal filed by the 6th respondent was rejected by the 3rd respondent by Ext.P9 order. The 3rd respondent also passed Ext.P10 order by which the request of the Manager to restore the Drawing Teacher's post in M.I.U.P. School, Ponnani in the light of G.O.(P) No.338/2004/Edn. Dated 10-11-2004 read with Government circular No.1/52/05 dated 27-1-2005 was rejected. The petitioner as well as the 6th respondent Manager filed appeals before the 2nd respondent challenging the above orders. Since no order has been passed by the 2nd respondent, the petitioner filed Ext.P12 representation dated 8-8-2005 before the 1st respondent Government. The petitioner's mother also filed Ext.P13 representation before the Honourable Minister for Education requesting to extend the benefit of G.O.(P) No.32/98/P2/ARD dated 29-9-1998 by which it was ordered that the

physically handicapped provisional employees who were in service during the period from 1-1-1997 to 31-12-1997 and who are still continuing in service would be retained in service. Those representations were also not considered. In the above circumstances, the petitioner has filed this writ petition.

3. At the time of admission of the writ petition, this Court passed an interim order dated 4-11-2005 directing the 3rd respondent to re-consider the issue which has been decided as per Ext.P10 in the light of Ext.P15 Government Order after hearing the petitioner within a period of three months from the date of production of copy of the order. The petitioner submits that still no order has been passed on the representation given by the petitioner. The petitioner also submits that as the petitioner was appointed in the vacancy which was arisen in M.I.U.P.School, Ponnani due to the death of the incumbent, the petitioner is entitled to get the benefit of Exts.P14 and P15 circulars. By Ext.P14 circular the Government clarified that a 10% reduction, out of the minimum number of students prescribed for sanctioning the post of other categories of specialist teachers would be allowed under the revised rate of 1: 40, for retaining specialist teachers in U.P. Wing of High Schools, where there is specific problem of division fall, subject to the condition that the post will be created on this account. By

Ext.P15 the Government further clarified that the teachers rendered surplus due to fall in division as on 15-7-2004 should be accommodated and retained in their parent Aided School applying 1:40 teacher student ratio. In the counter affidavit filed for and on behalf of the 3rd respondent it is stated that since the petitioner had not approved service prior to 15-7-1997, she was not eligible for protection. It is also stated that during the year 2004-'05 the effective strength of pupil was below the mandatory minimum even after allowing 10% reduction as in the case of applying 1:40 ratio and hence the request of the petitioner was not admissible as per the existing Rules and the orders.

4. The petitioner was appointed on 15-7-1997 in a post which had arisen due to the death of a Specialist Teacher and she continued in the above post up to November, 2004. The petitioner is a physically handicapped person having 50% locomotor disability. Hence, the benefit of Government Orders to retain the physically handicapped employees who were in service during the period from 1-1-1997 to 11-12-1997 has to be given to the petitioner. Further, as per G.O.(P) No.240/99/G.Edn. Dated 29-9-1999, the petitioner is also entitled to continue as Drawing Teacher in the M.I.U.P.School. That apart the petitioner has got approved service with effect from 15-7-1997 onwards and that service cannot be ignored for the

reason that she was not appointed prior to 14-7-1997 as the post already existed in the school. Admittedly, the petitioner was relieved from the High School section on 14-7-1997 itself and joined in the M.I.U.P.School and that service has been now approved. Hence, the appointment of the petitioner in the MI. U.P. School, Ponnani has to be construed as prior 14-7-1997. If that be so, the petitioner is entitled to get the benefit of Exts.P14 and P15 circulars issued by the Government.

5. In the light of the discussions made above, Exts.P4, P7 to P10, P11(a) and P17 are hereby quashed and the 1st respondent is directed to reconsider the entire matter and pass appropriate orders, as early as possible at any rate within 60 days from the date of receipt of copy of this judgment. With regard to the prayer that she is entitled to the salary for the period which she worked in the M.I. High School from 15-7-1996 to 14-7-1997 has also to be considered by the Government.

The writ petition is allowed to the extent indicated above.

**K.Thankappan,
Judge.**

mn.

K. Thankappan,J.

W.P.(C) No. 30752/2005

Judgment